IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3057 OF 1996.

1. Sou. Puspa Nandlal Gosavi, age 37, years, Occ. Household, r/o 4396/A, Dale Galli, Pandharpur.

2. Nandlalgir Dhanaraj Gosavi, age 45 years, Occ. business, r/o 4396/A Dale Galli, Pandharpur. .. Petitioners (Ori.Defdts.)

Versus

Dattatraya Hari Asalekar, age 38 years, Occ. Agric. and Scriber, r/o Pandharpur House No.4396/A, Dale Galli, Pandharpur. .. Respondent (Ori.Pltff.)

Mr. S.S. Patwardhan for the petitioners.

Mr. Tejas Deshmukh i/b A.A. Kumbhakoni for the respondent.

CORAM: ANOOP V. MOHTA, J.

DATED: 26TH JULY, 2005

ORAL JUDGMENT. :

1. The present Writ Petition under Article 227 of the Constitution of India, as filed by the petitioners - original tenants, seeks to challenge the reversal finding given by the Additional District Judge, Pandharpur (for short "Appellate Court") by the impugned judgment and order dated 20th March, 1996, that resulted

into decree for possession of the room in favour of the respondent-landlord.

2. The premises in question consists of the Southern portion of CTS No.4396 Khans purchased by the landlord-respondent with tenancy rights of petitioner over 5 Khans. Admittedly, the Northern half portion of 20 Khans has been purchased by the petitioners. On 31st August, 1982, landlord-respondent filed a Regular Suit before the Civil Judge, Junior Division at Pandharpur (for short "Trial Court") for possession of the premises and also for possession of the privy W.C. On 9th February, 1987, it was partly dismissed with respect to the 5 Khans room and partly decreed with respect to the W.C. privy.

3. On 2nd April, 1987, a Regular Civil Appeal No.236 of 1987 was preferred against the same. On 1st April, 1989, an application for amendment was moved by the respondent-landlord and for the first time, the ground of bonafide and personal requirement and comparative hardship were raised, as contemplated under Section 13(1)(g) of The Bombay Rents, Hotel Lodging House Rates (Control) Act, 1947 (for short "The Bombay Rent Act"). To this, there was a reply by the petitioners, whereby, apart from denial of the averments

of bonafide need, there are positive averments made in respect of comparative hardship by referring to the number of respective family members. Additional Issue was framed. The matter was remanded for additional evidence. The evidence was led accordingly by the parties. The landlord-plaintiff led evidence of himself and of his brother, apart from two other witnesses. Defendant examined himself only. The learned Judge, after considering the material, as well as, the evidence led by the parties, by judgment dated 8th July, 1991, partly decreed the suit as prayed and dismissed the prayer in respect of the premises i.e. 5 Khans.

4. In the Appeal preferred by the respondent-plaintiff the Appellate Court, based on the same record and evidence, accepted the submissions of the landlord-respondent including the case of bonafide need and comparative hardship and accordingly, allowed the Appeal filed by the respondent-landlord and granted the decree for possession. Therefore, this Writ Petition.

5. Heard Mr. S.S. Patwardhan, learned counsel for the petitioners and Mr. Tejas Deshmukh for the respondent. There is no dispute in the present case that the landlord in his evidence or in the evidence led by him, no reference is made about his bonafide need.

The pleading in paragraph 4(a) in the Plaint, however, reflects his and requirement of his family for the premises in question. The basic Civil Suit was for possession of the premises. In the contest, petitioners -tenant, however, resisted the contentions by referring to the issue of maintainability of the suit and also that no case of bonafide and reasonable need was made out by the landlord. On the same foundation, he positively averred about his family members and averred about comparative hardship. The basic objection was also of non supply of particulars under Section 13(1)(g) of the Bombay Rent Act. The learned counsel for the petitioners vehemently submitted that in the present case, the Appellate Court erred in reversing the finding and granting the decree for possession on the ground of bonafide need.

6. We have gone through the evidence led by the parties with the assistance of the learned counsel appearing for the parties. There is no doubt that the plaintiff in his evidence made no reference to the words "bonafide and/or reasonable need" of the premises in question. Therefore, it is sought to be contended that in absence of this positive averment even the reasoning given by the Appellate Court is wrong. Unless landlord comes into the witness box and makes a positive

statement about the bonafide need, there is no question of granting such relief for possession in absence of such positive statement. The learned counsel appearing for the respondent, however, submitted that the whole case of the petitioners admittedly has been for possession of the premises in question. By amendment to paragraph 4(a), the additional factor of bonafide need and/or comparative hardship have been incorporated. The parties had full knowledge at the relevant time while leading the respective evidence. Therefore, on this foundation, if landlord in his evidence makes a statement about his family members which were six at the relevant time, and further the same is supported by the brother of the landlord PW4 Vasudeo in reference to the alternative plea for getting possession under Section 13(g) of The Bombay Rent Act and further that the premises has been purchased for their own residence, it is difficult to reject the case of the landlord merely for want of missing words "bonafide or reasonable need".

7. The learned counsel appearing for the petitioners has relied on two statements which are as follows: "I had not felt it necessary to get the possession of the two rooms on the very day." "When I occupied the room as tenant I felt it unnecessary to occupy the disputed room". The learned counsel for the

petitioners, therefore, treated this as an admission to the effect that the landlord himself never required the premises for bonafide occupation. Considering the pleading and the contest to the said pleading by the parties, these two sentences, according to me, in no way can be treated as an admission that the need of the landlord is not bonafide or he never intended to get the possession for his own occupation.

8. The Trial Court, as pointed out by the learned counsel appearing for the respondent, was wrong in observing that no other evidence and/or even the evidence of the brother was led by the landlord in support of his case. In the present case, the evidence of the brother PW4 was led by the plaintiff in support of his case.

9. The Appellate Court, therefore, in my view, considering the pleading, as well as, the evidence led by the parties, was right in granting the decree for possession on the ground of bonafide need and further by granting the prayers, as prayed.

10. One more aspect which needs to be considered at this stage itself and as pointed out by the learned counsel appearing for the respondent is that the number

of family members, as referred in the year 1992, has been increased. This aspect also cannot be overlooked while considering a case like this, specially the bonafide need of the landlord. If the subsequent events in such cases can be taken note of, then there is no case made out to interfere with the finding given by the Appellate Court, even otherwise.

11. Once the landlord has made out a case of bonafide need and, as in the present case there is a material to support the same, the question of considering the comparative hardship also looses its strength for the above reasons itself. The issue of comparative hardship also goes in favour of the landlord. The family members of the tenant, in this background, cannot play dominant role to disturb the finding given by the Appellate Court in the present facts and circumstances of the case. The termination notice in such cases is not necessary and, therefore, not pressed the said issue.

12. In the present case, even though there was a dispute raised about maintainability of the suit, the finding given by the Appellate Court, after considering the rival contentions between the parties, with reference to the accepted relationship of landlord and

tenant and as admittedly in the present case, both the parties accordingly contested the present litigation, I am of the view that no further discussion is necessary in view of the finding given by the Appellate Court. The Suit, even otherwise, as filed and tried, the Trial Court has jurisdiction to entertain such Suits.

13. In the circumstances, the Writ Petition is dismissed. Rule is discharged. No order as to costs. At the request of the learned counsel appearing for the petitioners, the interim relief, as granted on 18th June, 1996, to continue for six weeks.

[ANOOP V. MOHTA, J.]

[srpasha@hc]